In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 275

PAUL HENRY SWIERENGA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a jury-waived trial in the United States District Court for the Eastern District of Michigan petitioner was convicted of having wilfully refused to submit to induction in violation of 50 U.S.C. App. 462. The opinion of the district court appears at pages 22-28 of the appendix to the petition. Petitioner was sentenced to four years imprisonment. The court of appeals affirmed (Pet. App. 19-21).

1. The evidence showed that on August 29, 1966, petitioner was ordered by his local draft board to report for induction on October 11, 1966 (Tr. 24, 55). Petitioner wrote to the board on September 3, 1966, requesting a sixty day extension in order to allow him to find a replacement for his business (Tr. 55). On September 6, 1966, this request for a postponement was considered and denied by the local board (Tr. 46-47).

Upon receipt of the board's denial, petitioner contacted an attorney who wrote a letter to the local board on September 13, 1966, on petitioner's behalf reiterating the business reason for the postponement and stating that "it is not the desire of Mr. Swierenga to avoid military service" (Tr. 27, 56; Pet. App. 23). In addition, petitioner himself sent a letter giving a detailed account of his need for the extension in order to arrange his affairs (Pet. App. 22). On September 20, 1966, the local board considered the two letters, and agreed that the request for a postponement would be granted if petitioner would sign an application for voluntary induction in the board's December or January quota (Tr. 28, 56). After notification of the board's ruling, petitioner, on September 22, 1966, responded by letter, expressing appreciation for their reconsideration but stating that he would be unwilling to volunteer for the draft. He said (Tr. 56-57, Pet. App. 23):

> However, I can not comply with your stipulation that I must first volunteer for the draft. This is directly against my religious principles. As a Christian, I do not believe it is for me to

> judge when another man shall die, or to take his life. If I volunteer, the blood is on my hands and I shall be judged for it [Tr. 56-57; Pet. App. 23].

The following day the local board responded that, if petitioner would not sign an application for voluntary induction he would be required to report as originally scheduled (Pet. App. 23-24).

On October 12, 1966, petitioner reported, but refused to submit to induction. At this time he filed a brief written statement in which he set out his reason for refusing to be inducted: "As a Christian, I do not believe it is for me to judge when another shall die, or to take his life" (Tr. 24; Pet. App. 23).

On January 25, 1967, petitioner appeared at the office of the local board to obtain a copy of Form SSS 150, the special form for conscientious objectors (Tr. 35, 70). He submitted the completed form on February 1, 1967 (Pet. App. 29-30), but the local board took no action.

Petitioner asserts that his statement regarding his reasons for refusing voluntary induction contained in his letter dated September 22, 1966, constituted a declaration of his conscientious objection beliefs, which the board was bound to consider under *United States* v. *Gearey*, 368 F. 2d 144 (C. A. 2), certiorari denied, 389 U. S. 959. Whether or not crystallization of conscientious objection beliefs after the mailing of an induction order is a circumstance over which the registrant has no control under 32 C.F.R. 1625.2 is an issue presently before the Court in *Ehlert* v. *United States*, No. 120, this Term. Peti-

tioner's letter of September 22, however, hardly qualifies as a notification of conscientious objector beliefs; rather it seems only to differentiate between voluntary and mandatory conscription. Petitioner did not assert to any federal authority beliefs in the nature of an unqualified conscientious objection to military service, until he furnished a written statement to induction center officials on the date he refused induction.[1]

This case is, thus, analogous to the situation presented in *United States* v. *Holmes*, certiorari pending, No. 111, 1970 Term, where the government is seeking review of a decision that a registrant could validly offer a last minute oral claim of conscientious objection at the induction station. An affirmance of *Ehlert* would control the disposition of this case and *Holmes*. In the event of reversal, the narrower question posed by the conflict between the decision below and *Holmes* would require resolution. Accordingly, it would seem appropriate to defer action on the present petition until *Ehlert* is decided.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1970.

[1] The local board itself was not formally notified of petitioner's claim until several months after petitioner refused induction.

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